

### **REMARKS/ARGUMENTS**

This amendment is submitted in response to the final Office Action dated October 31, 2008 and the Advisory Action dated January 15, 2009.

Claims 15, 27 and 28 have been amended and new Claims 41 and 42 have been added, Claim 41 having been presented in an After-Final Amendment, but not entered. Claims 1-42 remain pending. Support for the amendments can be found in the Specification. No new matter has been added. Reconsideration of the rejections and allowance of the pending claims is respectfully requested.

### **Telephone Interview**

The undersigned thanks the Examiner for the telephone interview conducted on December 5, 2008. During the interview, the Munnerlyn et al. reference was discussed; the reference had been relied upon in the October 31, 2008 Office Action but not identified by patent or publication number. The Examiner clarified that the correct reference was McMillen et al. (U.S. Patent No. 6,364,873).

### **Amendment to the Specification**

Applicant has amended the Specification to explicitly recite text which was previously incorporated by reference. More specifically, support for the newly added paragraph can be found in paragraph [0013] of U.S. Patent Application Ser. No. 10/738,358 (now U.S. Patent No. 7,293,873), which was incorporated by reference into the subject application in paragraph [0030] of the originally filed Specification for the subject invention. Hence, no new matter has been added.

### **Claim Rejections Under 35 U.S.C. §112**

Claim 32 was rejected under 35 U.S.C. § 112, ¶2 as indefinite with respect to the scaling of the diameter of the central ablation zone. Applicant submits that, when read in light of the Specification as amended, Claim 32 is understandable to one of ordinary skill in the art. Accordingly, Applicant respectfully requests that the rejection of Claim 32 be withdrawn.

### **Claim Rejections Under 35 U.S.C. §102**

Claims 1-3, 5, 9, 11, 14-17, 19, 23, 24 and 26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Largent (U.S. Patent No. 6,312,424). Applicant respectfully traverses this rejection.

Claim 1 requires, *inter alia*, "ablating a central zone of a corneal surface of a *first* eye" and "ablating a peripheral zone of a corneal surface of a *second* eye" (emphasis added) to improve the patient's ability to view near objects through the central and peripheral zones of the first and second eyes, respectively. Similarly, the method claimed in Claim 15 requires, *inter alia*, ablating a corneal surface of a first eye according to an aspherical first ablative shape that enhances near vision through a central zone of the first eye and ablating a corneal surface of a second eye according to an aspherical second ablative shape that enhances near vision through a peripheral zone of the second eye. Largent does not show or suggest these features.

On the contrary, Largent discusses shaping different zones of a single eye to provide different vision correction in each zone. Largent also discloses varying the ablation of a single eye based on the underlying weakness of that eye (e.g. farsightedness) and preferably correcting the central region of the eye for intermediate distance vision. However, there is no teaching or suggestion of providing complementary ablation shapes for first and second eyes or of coordinating the ablation of a first and a second eye to improve near vision through different zones of each eye. The present invention provides correction to the first and second eyes as a pair, providing corrected near vision through the central zone of one and through the peripheral zone of the other. As described in the Specification, the combination of the ablation shapes for the two eyes provides enhanced treatment for presbyopia as one eye predominates for near vision and the other for distance vision when the pupils constrict, and as the pupils dilate, the predominance of the eyes for near and far vision switches. Largent does not show or suggest that there should be any relation to the correction provided to a first eye when determining the correction of a second eye.

For these reasons, Largent does not teach each and every feature of Claims 1 and 15, thus it cannot anticipate the claims under 35 U.S.C. § 102(b). Accordingly, Applicant respectfully requests that the rejection of Claims 1 and 15 be withdrawn.

Claims 2, 3, 5, 9, 11 and 14 depend from Claim 1 and Claims 16, 17, 19, 23, 24 and 26 depend from Claim 15 and are allowable for at least the same reasons. In addition, with respect to Claims 2 and 16, Largent does not appear to expressly or inherently disclose ablating the central zone of the corneal surface of the eye to form a substantially spherical shape, as required to anticipate the claims. Therefore, Applicant respectfully requests that the rejection of each of these claims be withdrawn as well.

### **Claim Rejections Under 35 U.S.C. §103**

Claims 4, 6-8, 10, 12, 13, 18, 20-22 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Largent.

Claims 4, 6-8, 10, 12 and 13 depend from Claim 1, and Claims 18, 20-22 and 25 depend from Claim 15, and each is allowable for at least the same reasons. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn as well.

Claims 27-40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Largent in view of McMillen et al. (U.S. Patent No. 6,364,873) (corrected from Munnerlyn et al. in the Telephone Interview of December 5, 2008, as discussed above).

Claim 27 requires, *inter alia*, a processor that includes a tangible medium on which a treatment table is embodied. Neither Largent nor McMillen et al. shows or suggests such a treatment table. Claim 27 also requires, *inter alia*, a processor coupled to a laser that directs ablation of a first ablative shape on a corneal surface of a first eye that enhances near vision through a central zone of the first eye and a second ablative shape on a corneal surface of a second eye that enhances near vision through a peripheral zone of the second eye. As discussed above, Largent does not show or suggest ablating a first and a second eye with complementary ablative shapes. McMillen et al. does not cure this deficiency. Accordingly, Largent, either alone or in combination with McMillen et al., does not show or suggest the features of Claim 27, nor would one of ordinary skill in the art find it obvious to modify Largent

and McMillen et al. to have the claimed features. Therefore, Applicant respectfully requests that the rejection of Claim 27 be withdrawn.

Claims 28-40 depend from Claim 27 and are allowable for at least the same reasons. In addition, Claim 28 requires, *inter alia*, that the treatment table include reference coordinates for directing the laser device to ablate the first and second ablative shapes, which is not shown or suggested by Largent or McMillen et al. Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn as well.

### **Newly Added Independent Claims**

Claim 41 requires, *inter alia*, ablating a central zone of the corneal surface of a first eye to improve near vision and ablating a peripheral zone of the corneal surface of the first eye to improve far vision. Claim 41 also requires, *inter alia*, ablating a central zone of the corneal surface of a second eye to improve far vision and a peripheral zone of the corneal surface of the second eye to improve near vision. Claim 42 requires, *inter alia*, determining a complementary treatment plan for first and second eyes of a patient and ablating a central region of the first eye and a peripheral region of the second eye in accordance with that plan. Neither Largent nor McMillen et al. shows or suggests ablating first and second eyes as recited, nor do they show or suggest providing a complementary treatment plan. Further, Applicant submits that it would not have been obvious to one of ordinary skill in the art at the time of the invention to modify the cited references to provide such ablation or plan. Accordingly, Applicant respectfully requests that at least Claims 41 and 42 be allowed.

Appl. No. 10/849,573  
Amdt. dated February 2, 2009  
Reply to Final Office Action of October 31, 2008 and  
Advisory Action of January 15, 2009.

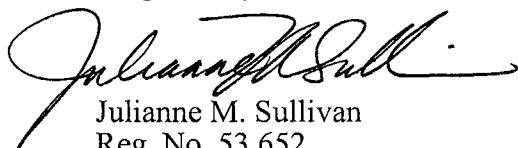
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### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6100.

Respectfully submitted,



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